

WRIT PETITIONS NO.267/2000 AND 268/2000

WRIT PETITION NO.267/2000

Shri J. Braganza,
Superintendent, (Outside Secretariat),
r/o. H.No.381, Davorlim,
P.O. Navelim, Salcete, Goa. Petitioner.

V/s.

1. The Goa Public Men's Corruption
(Investigation & Inquiries),
Commission, constituted u/s 4 of
the Goa Public Men's Corruption
(Investigation & Inquiries) Act,
1988 through its Secretary,
having Office at Altinho,
Panaji, Goa.

2. Minister of Urban Development,
Competent Authority under The
Goa Public Men's Corruption
(Investigation & Inquiries) Act,
1988, State of Goa, Secretariat,
Panaji, Goa.

3. The Director,
Director of Municipal
Administration, Government of Goa,
Collectorate Bldg., Panaji, Goa.

4. Shri Manuel Colaco,

5. Tereza Travasco,

6. Shri Raul Pereira,

7. Ana Paula Fernandes,

8. Shri Franky Gonsalves,
All Councillors,
Quepem Municipal Council,
Quepem, Goa.

9. State of Goa,
through its Chief Secretary,
Secretariat, Panaji, Goa. Respondents.

WRIT PETITION NO.268/2000

Shri Pradip Ramrai Naik,
Junior Engineer,
Borimol, Quepem, Goa.

.... Petitioner.

V/s.

1. The Goa Public Men's Corruption
(Investigation & Inquiries),
Commission, constituted u/s 4 of
the Goa Public Men's Corruption
(Investigation & Inquiries) Act,
1988 through its Secretary,
having Office at Altinho,
Panaji, Goa.

2. Minister of Urban Development,
Competent Authority under The
Goa Public Men's Corruption
(Investigation & Inquiries) Act,
1988, State of Goa, Secretariat,
Panaji, Goa.

3. The Director,
Director of Municipal
Administration, Government of Goa,
Collectorate Bldg., Panaji, Goa.

4. Shri Manuel Colaco,

5. Tereza Travasco,

6. Shri Raul Pereira,

7. Ana Paula Fernandes,

8. Shri Franky Gonsalves,
All Councillors,
Quepem Municipal Council,
Quepem, Goa.

9. State of Goa,
through its Chief Secretary,
Secretariat, Panaji, Goa.

.... Respondents.

Mr. M.S. Sonak, Advocate for the petitioners.

Mr.Noel Dias Sapeco, Advocate for respondent No.2 -
absent.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D.
Naik, Addl. Govt. Advocate for Respodent No.1, 3 and 9.

CORAM : N.N. MHATRE &
P.V. HARDAS, JJ.

DATE : 27TH JANUARY, 2004.

ORAL JUDGMENT : (Per MHATRE, J.)

These two writ petitions impugn the proceedings and report of the Commission constituted under the Goa Public Men's Corruption (Investigation & Inquiries) Act, 1988 (hereinafter referred to as 'the Act') and also the order of the Competent Authority appointed under the Act. The petitioner in Writ Petition No.267/2000 was the Chief Officer of the Quepem Municipal Council. The petitioner in writ petition No.268/2000 was the Municipal Engineer of the same Municipal Council.

2. Certain proceedings were initiated against the Chairperson of the Council by respondent No.5. The Commission appointed under the Act found that action ought to be taken against the Chairperson as well as the petitioner. Both the petitioners were not heard by the Commission. The Competent Authority, in turn, after investigation by the Commission and recommendation has also directed that action be taken against the petitioners as Government Servants.

3. The main contention of the learned Counsel

appearing on behalf of the petitioners is that both the petitioners are not covered by the term 'public man' as defined under the provisions of the Act and, therefore, no action could have been taken against them under the provisions of the Act. The learned Counsel urges that the findings of the Commission and of the Competent Authority are against the principles of natural justice and fair play as the petitioners were not heard either by the Commission or the Competent Authority.

4. On behalf of the respondents No.1, 3 and 9, learned Advocate General submitted that the Competent Authority has acted independent of Section 17 of the Act and has recommended that action be taken dehors the findings of the Commission.

5. Section 2(j) defines "public man" as under:

"(j) "public man" means a person who holds or has held in the State, the Office of -

(i) a Member or the Chief Minister of the State of Goa; or

(ii) a member of the Legislative Assembly of the State of Goa; or

(iii) the President or the Vice-president or the Chairman or Vice Chairman or the Secretary, or the Managing Director (by whatever name called) of -

(A) a local authority; or

(B) a Government Company as defined in section 617 of the Companies Act, 1956 (Central Act 1 of 1956); or

(C) a statutory body or Corporation or Board established by or under a statute and owned or controlled by the Government of Goa, including a co-operative society; or

(D) any other Corporation or Board or Society owned or controlled by the Government of Goa;

(iv) a member of a local authority or the Syndicate or Executive Committee of a University established by the Goa University Act, 1984 (Act 7 of 1984) or a member or Director (by whatever name called) of a body or corporation or Board or Society referred to in item (C) and item (D) of sub-clause (iii); or

(v) a member [other than an ex-officio member], of the State Transport Authority or any Regional Transport Authority; or

(vi) the President, Secretary or Treasurer or any other office bearer of a registered trade union; or

(vii) the Chairman or Vice-Chairman or President or Vice-President or Secretary or Treasurer or any other office bearer of a political party at the District or State level; or

(viii) the Chairman or Manager or Secretary or Correspondent having control over the administration of a Private School, whether under individual or corporate management, which receives or has received aid or grant from the Government under the Goa, Daman and Diu School Education Act, 1984 (Act 4 of 1984) and the rules made thereunder, or

(ix) the Chairman or Manager or Secretary or Correspondent having

control over the Administration of a Private College whether under a unitary or corporate management which is affiliated to a University in the State of Goa and which received aid or grant from the Government; or

(x) the Chairman or Manager or Secretary or Correspondent having control over the administration of a Private Engineering College or Private Polytechnic whether under a unitary or corporate management, affiliated to a University in the State of Goa or State Board of Technical Examination, Goa as the case may be [and which received aid or grant from the Government]."

Complaint as defined under Section 2(b), is a complaint alleging that a public man has indulged in corruption. Corruption has been defined under Section 3, and is related to only acts of a 'public man'. Under the Act, a complaint for initiating proceedings can be entertained by the Commission if the complaint is against a public man.

5. We are, thus, required to consider the question whether the petitioners in both the petitions are 'public men'. The petitioner in Writ Petition 267/2000 was the Chief Officer of the Municipal Council. The post of Chief Officer of a Municipal Council has not been included in the definition of 'public man'. The Chief Officer though a Government Servant, is not considered to be a public man under the Act and, therefore, action could not be initiated against him under the Act, nor could the Commission or

the Competent Authority make any reference to his conduct under the provisions of the Act. The petitioner in the other petition is a Municipal Engineer, who is also not a 'public man' under the definition contained in the Act. Therefore, the action initiated and the observations made by the Commission and the Competent Authority under the Act, in respect of the petitioners in both the petitions have to be set aside.

We are informed that disciplinary action has already been initiated against both the petitioners and Civil Suits filed by respondent No.3 for recovery of money from the petitioners are also pending. Disciplinary inquiries against both the petitioners will, of course, continue in accordance with law by observing the principles of natural justice. However, we make it clear that any observations contained either in the report of the Commission or in the order of the Competent Authority will not be considered and will not be binding on the Inquiry Officer or the Disciplinary Authority. The Civil Suits which have been initiated may continue in accordance with law.

The trial Court will also not be influenced by the findings recorded by the Commission or the Competent Authority.

NISHITA MHATRE, J.

P.V. HARDAS, J.

ssm.